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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,088	04/12/2004	Ning Wang	318-000220US	3167
22798 7590 08/06/2007 QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C. P O BOX 458 ALAMEDA, CA 94501			EXAMINER CANTELMO, GREGG	
			ART UNIT 1745	PAPER NUMBER
			MAIL DATE 08/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/823,088	<b>Applicant(s)</b> WANG ET AL.	
	<b>Examiner</b> Gregg Cantelmo	<b>Art Unit</b> 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 87-92,96,97,99-103,106-108 and 110-112 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 87-92,96,97,99-103,106-108 and 110-112 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/12/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. In response to the amendment received may 29, 2007:
  - a. Claims 87-92, 96, 97, 99-103, 106-108 and 110-112 are pending;
  - b. Applicant's claim for priority is still objected to with respect to the current oath/declaration filed with the application;
  - c. The specification objections are withdrawn in light of the amendment except for the improper incorporation by reference set forth in the previous office action.

### ***Oath/Declaration***

2. This application presents claims for subject matter not originally claimed or embraced in the provisional applications to which the instant application attempts to claim priority benefit. A supplemental oath or declaration is required under 37 CFR 1.67. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02. The new oath/declaration must correct the improper claim to the provisional applications since none of the pending claims are supported by the original disclosure of either provisional application.

### ***Specification***

3. The final paragraph of the specification incorporates by reference, all publications, patents and patent applications cited in the specification. However the incorporation of essential material in the specification by reference to an unpublished

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U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

#### ***Response to Arguments***

4. Applicant's arguments filed May 29, 2007 have been fully considered but they are not persuasive.

Applicant argues that the issue is immaterial.

The examiner respectfully disagrees. First given the fact that Applicant has cited a significant number of references in the application, 79 in total, there is a reasonable question that the instant application appreciated the various combination of teachings of the specification of the instant application and any one or a combination of some or all of the teachings in the total number of references cited. Furthermore incorporation of such references would further require adequate disclosure addressing every combination wherein any two or more references teach of distinct or opposing relationships, features or aspects. Secondly the language therein, in the presence of any later filed information disclosure statements may unreasonably fall under the disclosure of this concluding paragraph and thus present clear introduction of new matter into the instant application. In addition, it is unclear as to what specifically is

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being incorporated by reference and for all purposes. For example, 37 CFR § 1.57 - Incorporation by reference, includes section (g) which states:

(g) An incorporation of material by reference that does not comply with paragraphs (b), (c), or (d) of this section is not effective to incorporate such material unless corrected within any time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114(b), or abandonment of the application, whichever occurs earlier.

Since the specification incorporates by reference for all reasons and since rule 1.57 indicates that at least those reasons for incorporation by reference which fall outside of paragraphs b-d of rule 1.57 would constitute improper reasons for incorporation by reference, the specification of the instant application is still held to improperly employ the use of incorporation by reference.

#### ***Information Disclosure Statement***

5. The information disclosure statement filed March 12, 2007 has not been considered in the context of the outstanding specification objection above. Given that the specification employs improper incorporation by reference and that the language therein would indicate that all references cited in the published patent would improperly fall under this assumed incorporation by reference would subsequently introduce new matter into the application by incorporating the disclosures of all references cited after the filing of the original specification. Thus pending resolution of the specification objection further information disclosure statements will not be considered. It has been placed in the application file, but the information referred to therein has not been

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considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e).

***Allowable Subject Matter***

6. Claims 87-92, 96, 97, 99-103, 106-108 and 110-112 are allowed for reasons set forth in the previous office action which apply to claim 87 since claim 87 has been amended to include the previously allowable subject matter of claim 109.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

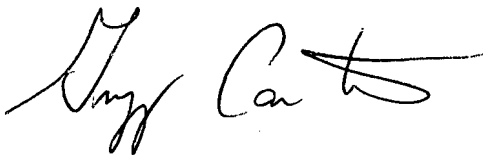
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is 571-272-1283. The examiner can normally be reached on Monday to Thursday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



gc  
August 1, 2007

Gregg Cantelmo  
Primary Examiner  
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